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APPENDIX A

II. The Instructions on the Legal Effect of the Contract

The collective bargaining agreement in effect during the merger process in 1965 and 1966 provided in Article V § 3(a) that, in the event of merger, the seniority of affected employees was to be determined by "mutual agreement" between the employers and the union, in accordance with the following general rules:

> "§ 3(a)(1) If both carriers involved are solvent then the seniority lists of the two Companies should be dovetailed so as to create a Master Seniority List based upon total years of service with either Company. This is known as dovetailing in accordance with years of seniority.
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> * * * * * * *
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> "§ 3(a)(8) The parties acknowledge that specific situations may arise which may not be covered by the above rules, or in which the parties may feel that different treatment of the problem is necessary.
>
> * * * The Change of Operations Committee * * * shall have the authority to add to or modify these rules in specific situations presented to it."

When the Change of Operations Committee was first presented the facts regarding the proposed merger, it issued a written ruling on June 16, 1965 consistent with the contract:

> "* * * All displaced employees * * * shall be placed on the Master Seniority [List] with the original date of hire, regardless of the terminals they may have worked in where they had accumulated only terminal seniority * * *."

By September of 1966, approximately seventeen former Watson-Wilson employees, not including Butler,[13] were working at the Baxter Springs terminal of Yellow, but their names had not yet been dovetailed with those of the Yellow drivers at that terminal.[14]

On September 20, 1966, another Change of Operations Committee meeting was held in Chicago. No minutes of that meeting were produced and, unlike the June 16, 1965 meeting, it did not result in the issuance of a written decision. The evidence as to what took place at that meeting was slight, and dealt only with its purported outcome. Mr. Melton, then a Vice President for Watson-Wilson, testified that:

> "* * * the decision was that all those employees presently working at St. Louis, Chicago, and Baxter Springs would be dovetailed in line with their full company seniority and any employees accepting job opportunity after that date would go to the bottom of the list for terminal seniority and [would have] company seniority for his [sic] fringe benefits."

The Local had apparently not reached the same conclusion as to the outcome of that meeting, for on September 26, 1966, Local representative Kitts posted a roster in which only the first

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[13] It is not contended that Butler was entitled to recall to the Baxter Springs terminal at that time.

[14] The defendants urge that separate seniority lists were required by the contract because the companies were operating under non-parallel rights and the ICC had not yet finally approved the merger. They contend that the instructions erroneously fixed the date of final ICC approval and hence erroneously fixed the date on which dovetailing was required. The court disagreed, ruling that dovetailing was required under the contract long before the ICC finally approved the merger on October 10, 1968. We do not believe that the issue of *when* the rosters were to be consolidated is relevant to the issue of *which* employees were to be granted company seniority. Hence, any mistake as to the date of final ICC approval is not relevant.

nine of the seventeen former Watson-Wilson drivers already working at Baxter Springs were dovetailed with the Yellow drivers. The remaining eight were given terminal seniority for bid purposes. Several of the latter employees filed grievances, and the union and Employer subsequently agreed to grant them company seniority.[15] The result was a roster on December 16, 1966, which dovetailed all the former Watson-Wilson employees *then* working for Yellow at Baxter Spring with the Yellow drivers.

The court instructed the jury in effect that, when recalled to work at Baxter Springs on March 29, 1967, Butler was entitled to be granted his company seniority by the provisions of the collective bargaining agreement and the relevant Change of Operations decision, and that Yellow breached the contract if it did not afford him such seniority. The appellants object to this instruction claiming that it removed the only significant issue from the jury—whether it made any difference that Butler came to Baxter Springs after the purported September 1966 cut-off date.

We find no error in the court's legal conclusion that the contract was unambiguous. Article V § 3(a)(1) directly covers the situation which arose when Butler was called to work. Yellow claims that Article V § 6 authorizes less than full seniority, but that provision deals only with instances where a branch or ter-

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[15] The record is murky as to how this change came about. Local representative Kitts testified that Mr. Roy Williams, Chairman of the union bloc on the Grievance Committee, informed him that he had been mistaken in his interpretation of the Committee's September 20 decision, and that all currently working employees were to be dovetailed. Mr. Smith, who was one of the former Watson-Wilson employees originally denied company seniority by the September 26 roster who filed a grievance, testified that:

> "* * * Brother Williams got up and said it was sort of fouled up and they would have to go back to Chicago to the original Change of Operations Committee, at least that's what I understood him to say."

minal of the company is closed, and was plainly not applicable to the merger here. Since the contract was not ambiguous,[16] it was proper for the court to instruct the jury as to its meaning and effect. See, *Motor Carriers Council of St. Louis, Inc. v. Local Union No. 600*, 468 F2d 650, 653 (8th Cir. 1973).

Yellow claims, however, that the September 20, 1966, "decision" of the Change of Operations Committee altered the terms of the contract, and that the instructions were defective in failing to even mention this decision. We do not agree. The trial court's reasoning in removing the issue of contract-alteration from the jury is not expressed on the record. It seems clear, however, that the purported contract alteration was ignored for one of two reasons: (1) there was not sufficient evidence to permit a finding that the contract had indeed been altered; or (2) there was not sufficient evidence to permit a finding that the Committee had complied with the conditions of § 3(a)(3) in modifying the contract.[17] We conclude that failure to instruct on the September 20 decision was proper under either theory.

First, the defendants' proof of the decision was entirely dependent on the oral testimony of two witnesses—Mr. Kitts and Mr. Melton. Within days of the purported decision, Mr. Kitts took part in the posting of a roster which was inconsistent with the defendants' version of what that decision had held. We need not determine the degree of formality which is necessary for the Committee to modify the contract, but surely a written

[16] For the same reason, there was no abuse of discretion in the court's exclusion of oral testimony offered to show industry practices in other mergers and offered to explain other Change of Operations Committee decisions which were allegedly analogous.

[17] While we are not faced with the issue, it seems clear that there is a third theory protecting employees in the contract-modification process. For, even without the conditional language of § 3(a)(8), under the fair representation doctrine it seems clear that the Committee could not modify the contract in an irrational way in order to discriminate against an employee or group of employees.

record of some type is necessary—whether a formal written decision, as employed in June of 1965, an exchange of correspondence, or the minutes of the meeting. Only when the decision is reduced to some permanent form will affected persons be adequately informed of the modification. Assuming that the District Court was relying on this approach, we agree that the testimony of Kitts and Melton was insufficient, as a matter of law, to support a finding that the contract had been modified.

Second, we read § 3(a)(8) to limit the Committee's power to those specific situations which are not covered by the rules, or in which "the parties may feel that different treatment of the problem is necessary." Since the rules clearly covered Butler's recall, the power to alter the contract could only be triggered by the latter condition; the cutoff line between employees recalled by September 1966 and employees recalled thereafter had to be rooted in necessity. The defendants made no showing that it was necessary to treat Butler in a different manner than his predecessors; indeed, they did not even attempt to demonstrate that the Committee *felt* that different treatment was necessary. Not only was there no showing of necessity, but the record is devoid of any rational explanation for the cutoff imposed here and counsel for the appellants was unable to advance any explanation at oral argument. Under these circumstances, the District Court would have been correct in holding that the September 20, 1966 action of the Committee was not in accordance with the contract. Hence, the explicit provisions of Article V § 3(a)(1), as implemented by the earlier Change of Operations decision, were controlling. The instructions adequately apprised the jury of the meaning of the contract.

III. Propriety of the Instructions and Sufficiency of the Evidence on the Issue of Fair Representation

The appellants assert that the court's instructions on the issue of unfair representation were inadequate. We have exam-

ined them carefully and find that there was no error. The court instructed the jury that the Local had "a legal duty fairly to represent the plaintiff without arbitrariness, discrimination, or bad faith * * * in the processing of his complaint and grievance", and that the jury could not find the Local liable unless it found that the Local had breached that duty. In giving these instructions, the court employed the language of the Supreme Court in *Vaca v. Sipes, supra,* at 190. We cannot agree with the appellants that, in the circumstances of this case, further definitions of "arbitrary", "discriminatory", or "bad faith" were required. Furthermore, the court correctly stressed to the jury that it could not find Yellow liable unless it first found that the Local had failed to represent the plaintiff fairly.

The evidence viewed most favorably to the jury verdict on the issue of fair representation supports it. Kitts testified to an atmosphere of antagonism among Yellow drivers after the first Change of Operations Committee decision in 1965:

> "* * * I had quite a lot of trouble with the Yellow Freight drivers * * *. Everybody knew that Watson drivers had a lot of seniority, Watson was an old line * * * and they didn't want any of them down there. * * * [T]hey felt that they had no reason to be there * * *. And there was a lot of dissatisfaction amongst the drivers, and well, it got pretty bad. They was about ready to throw me out of the hall, and the president of our local, too, because they absolutely didn't want to lose any of their work. * * *"

The jury could logically infer that this hostility against Watson-Wilson employees was given an outlet in the Local's aborted attempt in the September 26, 1966 roster to cut off eight of those former employees who were already working at the Baxter Springs terminal. Butler testified that Local President Webb "guaranteed" that his grievance would be rejected, and told him flatly that he could not attend the Grievance Committee hearing. There was adequate evidence from which the jury

could find that the Local was continuing to protect Yellow drivers—this time at the expense of Butler—and that the Change of operations Committee alleged decision of September 1966 was an irrational and discriminatory one which the Local failed to contest on Butler's behalf because it did not wish to antagonize Yellow drivers.[18] In short, the jury could find that the Local had breached its duty to insist that the Employer adhere to the contract, and had acquiesced in an irrational interpretation of the contract, thereby discriminating against Butler.

We stress, however, that we do not hold here that the mere fact that a District Court ultimately disagrees with a union's interpretation of a collective bargaining agreement is sufficient in and of itself to establish a case of unfair representation.

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[18] To be sure, Kitts testified that he presented the grievance to the Committee and asked that it be accepted, and Melton testified to the same effect. Whether Kitts made a "strong and complete" presentation at the hearing as the appellants suggest in their brief was a factual issue resolved against them by the jury. The jury may have discounted the testimony of Kitts and Melton due to their demeanor, the Local's past favoritism to Yellow drivers, and Butler's testimony.

APPENDIX B

A hearing on defendants' post-trial motions, including the present motions for judgment notwithstanding the verdict and for a new trial, was held on August 21, 1973. Other post-trial proceedings and additional briefs have ensued since the argument with respect to the original post-trial motions. The last letter brief was received March 22, 1974, accompanied by a relevant decision of the United States District Court for the District of Kansas in Dudley v. Woods Industries, Inc., et al., Civil Action No. KC-3491 (D. Kans., March 20, 1974).

With insignificant exceptions and variations, defendants' numerous contentions in support of the motions for judgment notwithstanding the verdict and for a new trial may be summarized into the following general contentions: (1) that the Court erred in not permitting certain testimony as to the meaning of the collective bargaining agreement and the Change of Operations Committee decisions; (2) that plaintiff's action is barred by the statute of limitations; (3) that the Court erred in its instructions to the jury as to interpretation of the contract; (4) that the Court erred in allowing plaintiff to amend his complaint and that the granting of declaratory and compensatory relief was in error; and (5) that the Court erred in submitting the issue of exemplary or punitive damages to the jury.

Defendants initially contend that witnesses Karsten, Kitts, Pickens, Melton and Bath should have been allowed to testify as to the meaning and effect of the applicable sections of the collective bargaining agreement and the Change of Operations decisions. In support thereof, defendants assert that ". . . the courts have consistently allowed oral testimony from the parties to a collective bargaining contract as to their understanding of the terms, provisions and procedures under the agreement, as well as to various oral agreements made thereunder." In support of that statement defendants cite the single case of Watson

v. International Brotherhood of Teamsters, 399 F2d 875 (5th Cir. 1968). The *Watson* case is factually distinguishable to the case at bar. That case involved a preexisting oral agreement between the parties which was not abrogated by the subsequent nonintegrated written agreement. The written instrument even contained a provision which provided that such previous agreements be continued.

[1, 2] The issue whether a contract is ambiguous or otherwise subject to extrinsic interpretation is a matter of law for initial resolution by the trial court. Motor Carriers Council of St. Louis, Inc. v. Local Union No. 600, 486 F2d 650 (8th Cir. 1973); Metropolitan Paving Co. v. City of Aurora, 449 F2d 177, 181 (10th Cir. 1971); Pipkin v. FMC Corp., 427 F2d 353, 356 (5th Cir. 1970); Steele v. McCargo, 260 F2d 753, 758 (8th Cir. 1958). The contract in the case at bar in its material terms, when considered as a whole, was not ambiguous, and did not otherwise require the testimony of the lay witnesses to determine the interpretation and construction of terms contained therein. *Cf.*, Motor Carriers Council of St. Louis, Inc. v. Local Union No. 600, 486 F2d 650, 653 (8th Cir. 1973). Section 3 of Article 5 clearly delineated the agreement of the parties, expressly describing what was to be done in the precise circumstances of this case. That agreement was correctly applied by the Change of Operations Committee in its decision of June 16, 1965. In a case of this type, neither Mr. Kitts nor any other individual could properly have been permitted to testify to any practice, intent or subsequent action contrary to the terms of the basic agreement. Further, any proffered evidence, even if otherwise admissible, would not have been competent to divest this plaintiff of those seniority rights guaranteed him by the written collective bargaining agreement. The proffered testimony was conclusory, argumentative, and otherwise inadmissible.

APPENDIX C

June 16, 1965—1:15 o'clock

Case No. 155 . . . Case No. 155 is as follows:

Watson-Wilson Transportation

Re: Request for change of operation involving:

Local 961, Denver	Local 147, Des Moines
554, Omaha	710, Chicago
608, Lincoln	600, St. Louis
120, St. Paul	41, Kansas City
383, Sioux City	823, Joplin
577, Amarillo	371, Rock Island

Local 784, Grand Island

Mr. Hoffa: Change of operations of Watson-Wilson to be agreed to as presented, with the following understandings:

1. All displaced employees in Central States Conference and Southern Conference shall be placed on a master seniority with the original date of hire, regardless of the terminals they may have worked in where they had accumulated only terminal seniority, with the understanding that the Denver drivers who had westbound seniority as well as eastbound seniority shall be governed by past practice.

2. Company agrees there will be no additional change of operation that requires a change of domicile for a period of three years.

3. Company further agrees that in lieu of the two-year layoff period existing in the Western, Central and Southern contracts, it shall be extended to five years.

APPENDIX D

National Master Freight Agreement and Central States Area Over-the-Road

Supplemental Agreement for the Period of February 1, 1964 to March 31, 1967

Article 5.

Section 1. *Seniority Rights*

Seniority rights for employees shall prevail under this Agreement and all agreements supplemental hereto. Seniority shall only be broken by discharge, voluntary quit, more than a two (2) year layoff or as provided in any applicable provisions of the Supplemental Agreements. The extent to which seniority shall be applied as well as the methods and procedures of such application shall be clearly set forth in each of the Supplemental Agreements.

Section 3. (a) In the event that the Employer absorbs the business of another private, contract or common carrier, or is a party to a merger of lines, the seniority of the employees absorbed or affected thereby shall be determined by mutual agreement between the Employer and the Unions involved.
In the application of this provision the following general rules shall apply:

Merger, purchase, acquisition, sale, etc.

4. Company further agrees to pay a minimum of 30 days room rent to give drivers the opportunity of disposing of their homes for as little loss as possible in re-sale of such homes.

5. Company further agrees that all displaced personnel that are not covered by the master agreement shall be offered positions at other terminals where new employees are required and, if such old employees are rehired, they shall have fringe benefit seniority only.

(1) If both carriers involved are solvent then the seniority lists of the two Companies should be dovetailed so as to create a Master Seniority List based upon total years of service with either Company. This is known as dovetailing in accordance with years of seniority. In the application of this rule it is immaterial whether the transaction is called a merger, purchase, acquisition, sale, etc. It is also immaterial whether the transaction involves merely the purchase of stock of one corporation by another, with two separate corporations continuing in existence, and it is immaterial whether separate terminals of the Companies are physically merged or not, subject, however to rules 4 and 5 below.

(2) If, in the type of transaction described above, one of the Companies is insolvent at the time of the transaction, then the employees of the insolvent Company will go to the bottom of the master seniority list. The test of whether a Company is solvent or insolvent is governed entirely by whether bankruptcy, receivership, composition for the benefit of creditors, reorganization, or similar proceedings are pending in the state or federal court. If such proceedings are pending, the Company is considered insolvent for the purpose of this rule.

(3) If the transaction involved constitutes merely a purchase of permits or rights by one Carrier from another Carrier, without the purchase or acquisition of equipment, terminals, or business, the employees of the Company selling the permits shall have no seniority rights at all, but shall be offered opportunity for employment at the bottom of the seniority list of the Company purchasing the permits. If such employees are hired they shall be given seniority credit for fringe benefits only.

(4) If the merger, purchase, acquisition, sale, etc. involves two Companies which do not have parallel operating rights then separate seniority lists will be maintained for the separate non-parallel operations. However, there will be one master seniority list for the purpose of fringe benefits, etc., and for the protection of employees laid off on one seniority board when work opportunities are available on the other seniority board and all eligible employees on such other seniority board are employed.

(5) Where the transaction involves both parallel and non-parallel rights then rules 1 and 2 above will apply to the parallel rights, and rule 4 will apply to non-parallel rights.

(6) Where only temporary authority is granted in connection with any of the transactions described above, then separate seniority lists shall continue in effect until final authority is granted unless otherwise agreed. The Company which is to survive will assume the obligations of both collective bargaining agreements during the period of the temporary authority.

(7) If in connection with the transactions described in these rules the successor Company determines to discontinue the use of a Local Cartage Company, the employees of that Local Cartage Company, who have worked on the pick-up and delivery service which is retained by the successor Company shall be given opportunity to continue to perform such service as an employee of such successor Company, and shall have their seniority dovetailed as described in the above rules.

(8) The parties acknowledge that specific situations may arise which may not be covered by the above rules, or in which the parties may feel that different treatment of the problem is necessary. In such situation the Employer, the Unions involved, and the Area Committee may mutually agree to such disposition of the seniority problems, as in their judgment is appropriate under the circumstances. The Change of Operations Commit-

tee under the Local Supplement or the National Master Agreement shall have the authority to add to or to modify these rules in specific situations presented to it.

Section 6. *New Branches, etc.*

(a) Opening of new branches, terminals, divisions of operations.

(1) When a new branch, terminal, division or operation is opened (except as a replacement for existing operations or as a new division in a locality where there are existing operations), the Employer shall offer the opportunity to transfer to regular positions in the new branch, terminal, division or operation in the order of their company or classification seniority, to employees in those branches, terminals, divisions or operations which are affected in whole or part by the opening of the new branch, terminal, division or operation. This provision is not intended to cover situations where there is replacement of an existing operation or where a new division is opened in a locality where there is an existing terminal. In these latter situations, laid-off or extra employees in the existing facilities shall have first opportunity for employment at the new operation in accordance with their seniority. If all regular full-time positions are not filled in this manner, then the provisions of the above paragraph shall apply.

(2) The transferred employees, other than those referred to in the exception to Section 6(a)(1), above shall, for a period of 30 days following the transfer, have an unqualified right to return to their old branch, terminal, division or operation if it is still in existence and carry with them their seniority at that old branch, terminal, division or operation. Employees who avail themselves of the transfer privileges because they are on lay-off at their original terminal may exercise their seniority rights if work becomes available at the original terminal during the two year lay-off period allowed them at their original terminal.

Transferred employees shall have, after 30 days, the same privileges with respect to subsequent transfers as set forth in paragraph 1 above.

Closing of Branches, etc.

(b) Closing of branches, terminals, divisions of operations.

(1) When a branch, terminal, division or operation is closed and the work of the branch, terminal, division or operation is eliminated, an employee who was formerly employed at another branch, terminal, division or operation shall have the right to transfer back to such former branch, terminal, division or operation and exercise his seniority based on the date of hire at the branch, terminal, division or operation into which he is transferring provided he has not been away from such original terminal for more than two years.

(2) When a branch, terminal, division or operation is closed or partially closed and the work of the branch, terminal, division or operation is transferred to another branch, terminal, division or operation in whole or in part, an employee at the closed or partially closed down branch, terminal, division or operation shall have the right to transfer to the branch, terminal, division or operation into which the work was transferred if regular work is there available. Such employee, however, shall go to the bottom of the seniority board and shall have the right of job selection only in accordance with his seniority at such terminal. However, he shall exercise his company seniority for lay-off purposes and all other contract benefits.

(c) When a branch, terminal, division or operation is closed and the work of the branch, terminal, division or operation is eliminated, and no part of it is transferred to another branch,

terminal, division or operation employees who are affected thereby shall be given first opportunity for available regular employment at any other branch, terminal, division or operation of the Employer within the Area of the Supplemental Agreement under which employed. The obligation to offer such employment shall continue for a period of two years from the date of closing, however the Employer shall not be required to make more than one offer during this period. Any employee accepting such offer shall pay his own moving expenses. If hired, they shall go to the bottom of the seniority board but shall have company seniority for fringe benefits only.

Article 41.

Section 1. *Seniority*

Seniority rights for employees shall prevail. Seniority shall be broken only by discharge, voluntary quit, or more than a two-year lay-off. In the event of a lay-off, an employee so laid off shall be given two weeks' notice of recall mailed to his last known address. In the event the employee fails to make himself available for work at the end of said two weeks, he shall lose all seniority rights under this Agreement. A list of employees arranged in the order of their seniority shall be posted in a conspicuous place at their place of employment. Stewards shall be granted super-seniority for all purposes, including lay-off, rehire, bidding and job preference, if requested by the Local Union within sixty (60) days after the effective date of this Agreement; but only one (1) steward shall have super-seniority for such purposes. Any controversy over the seniority standing of any employee on the seniority list shall be submitted to the joint grievance procedure.

Terminal seniority, as measured by length of service at such terminal shall prevail excepting in those instances where the Employer, the Unions involved, and the Central States Drivers Counsel agree to the contrary.

The Local Union and the Employer shall agree, subject to the approval of the Joint Area Committee, on circumstances under which persons who leave the classification of work covered by this Agreement, but remain in the employ of the Employer in some other capacity, may retain seniority rights upon their return to their original unit. In the absence of such express agreement, such employee shall lose all seniority rights upon leaving.

Section 2.

(a) All runs and new positions are subject to seniority and shall be posted for bids. Posting shall be at a conspicuous place so that all eligible employees will receive notice of the vacancy, run or position open for bid, and such posting of bids shall be made not more than once each calendar year, unless mutually agreed upon. Peddle runs shall be subject to bidding provided driver is qualified.

(b) When it becomes necessary to reduce the working force, the last man hired shall be laid off first, and when the force is again increased, the men are to be returned to work in reverse order in which they are laid off.

APPENDIX E

National Master Freight Agreement

and

Central States Area Over-the-Road

Supplemental Agreement
For the Period of
April 1, 1967
Through
March 31, 1970

Article 5.

Section 1. *Seniority Rights*

Seniority rights for employees shall prevail under this Agreement and all Agreements supplemental hereto. Seniority shall only be broken by discharge, voluntary quit, more than a three (3) year lay-off, or for such greater period than three (3) years as a change of operation committee may direct during the third year as provided in Article 8(e) herein, or as provided in any applicable provisions of the Supplemental Agreements.

The extent to which seniority shall be applied as well as the methods and procedures of such application shall be clearly set forth in each of the Supplemental Agreements.

Section 3. (a) In the event that the Employer absorbs the business of another private, contract or common carrier, or is a party to a merger of lines, the seniority of the employees absorbed or affected thereby shall be determined by mutual agreement between the Employer and the Unions involved.

In the application of this provision the following general rules shall apply:

Merger, purchase, acquisition, sale, etc.

(1) If both carriers involved are solvent then the seniority lists of the two Companies should be dovetailed so as to create a Master Seniority List based upon total years of service with either Company. This is known as dovetailing in accordance with years of seniority. In the application of this rule it is immaterial whether the transaction is called a merger, purchase, acquisition, sale, etc. It is also immaterial whether the transaction involves merely the purchase of stock of one corporation by another, with two separate corporations continuing in existence, and it is immaterial whether separate terminals of the Companies are physically merged or not, subject, however, to rules 4 and 5 below.

(2) If, in the type of transaction described above, one of the Companies is insolvent at the time of the transaction, then the employees of the insolvent Company will go to the bottom of the master seniority list. The test of whether a Company is solvent or insolvent is governed entirely by whether bankruptcy, receivership, composition for the benefit of creditors, reorganization, or similar proceedings are pending in the state or federal court. If such proceedings are pending, the Company is considered insolvent for the purpose of this rule.

(3) If the transaction involved constitutes merely a purchase of permits or rights by one Carrier from another Carrier, without the purchase or acquisition of equipment, terminals, or business, the employees of the Company selling the permits shall have no seniority rights at all, but shall be offered opportunity for employment at the bottom of the seniority list of the Company purchasing the permits. If such employees are hired they shall be given seniority credit for fringe benefits only.

(4) If the merger, purchase, acquisition, sale, etc. involves two Companies which do not have parallel operating rights then separate seniority lists will be maintained for the separate non-parallel operations. However, there will be one master seniority list for the purpose of fringe benefits, etc., and for the protection of employees laid off on one seniority board when work opportunities are available on the other seniority board and all eligible employees on such other seniority board are employed.

(5) Where the transaction involves both parallel and non-parallel rights then rules 1 and 2 above will apply to the parallel rights, and rule 4 will apply to non-parallel rights.

(6) Where only temporary authority is granted in connection with any of the transactions described above, then separate seniority lists shall continue in effect until final authority is granted unless otherwise agreed. The Company which is to survive will assume the obligations of both collective bargaining agreements during the period of the temporary authority.

(7) If in connection with the transactions described in these rules the successor Company determines to discontinue the use of a Local Cartage Company, the employees of that Local Cartage Company, who have worked on the pick-up and delivery service which is retained by the successor Company shall be given opportunity to continue to perform such service as an employee of such successor Company, and shall have their seniority dovetailed as described in the above rules.

(8) Area and/or State Committees created pursuant to Local Supplements which have previously established rules of seniority, not contrary to the provisions of such Supplements, and approved by the Joint Area Committee, may continue to apply such rules if such rules are reduced to writing.

(b) If the minimum wage, hour and working conditions in the company absorbed differ from those minimums set forth in this Agreement and Supplements thereto, the higher of the two shall remain in effect for the men so absorbed.

(c) Where any employee is required, through no fault of his own, to change residence in order to follow employment as a result of an approved change of operation, the Employer shall move the employee and assume the responsibility for proven loss of, or damage to, household goods due to such move, or pay his moving expenses, including insurance against loss or damage. This shall not apply to moves within the 75-mile radius as defined in the peddle run provision, except where by past practice and agreement, a greater or lesser radius has been agreed to. The Employer shall not be responsible for moving expenses if the employee changes his residence as a result of voluntary transfer.

Section 5. *New Branches, etc.*

(a) Opening of new branches, terminals, divisions or operations.

(1) When a new branch, terminal, division or operation is opened (except as a replacement for existing operations or as a new division in a locality where there are existing operations), the Employer shall offer the opportunity to transfer to regular positions in the new branch, terminal, division or operation in the order of their company or classification seniority, to employees in those branches, terminals, division or operations which are affected in whole or part by the opening of the new branch, terminal, division or operation. This provision is not intended to cover situations where there is replacement of an existing operation or where a new division is opened in a locality where there is an existing terminal. In these latter situations, laid-off or extra employees in the existing facilities shall have first opportunity for employment at the new operation in accordance with their seniority. If all regular full-time positions are not filled in this manner, then the provisions of the above paragraph shall apply.

(2) The transferred employees, other than those referred to in the exception to Section 5(a)(1), above shall, for a period of 30 days following the transfer, have an unqualified right to return to their old branch, terminal, division or operation if it is still in existence and carry with them their seniority at that old branch, terminal, division or operation. Employees who avail themselves of the transfer privileges because they are on lay-off at their original terminal may exercise their seniority rights if work becomes available at the original terminal during the two year lay-off period allowed them at their original terminal.

Transferred employees shall have, after 30 days, the same privileges with respect to subsequent transfers as set forth in Paragraph 1 above.

Closing of Branches, etc.

(b) Closing of branches, terminals, divisions or operations.

(1) When a branch, terminal, division or operation is closed and the work of the branch, terminal, division or operation is eliminated, an employee who was formerly employed at another branch, terminal, division or operation shall have the right to transfer back to such former branch, terminal, division or operation and exercise his seniority based on the date of hire at the branch, terminal, division or operation into which he is transferring provided he has not been away from such original terminal for more than two years.

(2) When a branch, terminal, division or operation is closed or partially closed and the work of the branch, terminal, division or operation is transferred to another branch, terminal, division or operation in whole or in part, an employee at the closed or partially closed down branch, terminal, division or operation

shall have the right to transfer to the branch, terminal, division or operation into which the work was transferred if regular work is there available. Such employee, however, shall go to the bottom of the seniority board and shall have the right of job selection only in accordance with his seniority at such terminal. However, he shall exercise his company seniority for lay-off purposes and all other contract benefits.

(c) When a branch, terminal, division or operation is closed and the work of the branch, terminal, division or operation is eliminated, and no part of it is transferred to another branch, terminal, division or operation employees who are affected thereby shall be given first opportunity for available regular employment at any other branch, terminal, division or operation of the Employer within the Area of the Supplemental Agreement under which employed. The obligation to offer such employment shall continue for a period of three years from the date of closing, however the Employer shall not be required to make more than one offer during this period. Any employee accepting such offer shall pay his own moving expenses. If hired, they shall go to the bottom of the seniority board but shall have company seniority for fringe benefits only.

Section 7

The parties acknowledge that specific situations may arise which may not be covered by the rules set forth in this Article or in which the parties may feel that different treatment of the problem is necessary. In such situation, the Employer, the Unions involved, and the Area Multi-Conference or National Committees may mutually agree to such disposition of the seniority problems as in their judgment is appropriate under the circumstances. The Change of Operations Committee under the Local Supplements of the National Master Agreement shall have the authority to add to or to modify these rules in specific situations presented to them.

Article 41.

Section 1. *Seniority*

Seniority rights for employees shall prevail. Seniority shall be broken only by discharge, voluntary, quit, or more than a three-year lay-off, or for such greater period than three (3) years as a Change of Operations Committee may direct during the third year of a change of operations as provided in Article 8(e) herein. In the event of a lay-off, an employee so laid off shall be given two weeks' notice of recall mailed to his last known address. In the event the employee fails to make himself available for work at the end of said two weeks, he shall lose all seniority rights under this Agreement. A list of employees arranged in the order of their seniority shall be posted in a conspicuous place at their place of employment. Stewards shall be granted super-seniority for all purposes, including lay-off, rehire, bidding and job preference, if requested by the Local Union within sixty (60) days after the effective date of this Agreement; but only one (1) steward shall have super-seniority for such purposes. Any controversy over the seniority standing of any employee on the seniority list shall be submitted to the joint grievance procedure.

Terminal seniority, as measured by length of service at such terminal shall prevail excepting in those instances where the Employer, the Unions involved, and the Central States Drivers Council agree to the contrary.

The Local Union and the Employer shall agree, subject to the approval of the Joint Area Committee, on circumstances under which persons who leave the classification of work covered by this Agreement, but remain in the employ of the Employer in some other capacity, may retain seniority rights upon their return to their original unit. In the absence of such express agreement, such employee shall lose all seniority rights upon leaving.

Section 2

(a) All runs and new positions are subject to seniority and shall be posted for bids. Posting shall be at a conspicuous place so that all eligible employees will receive notice of the vacancy, run or position open for bid, and such posting of bids shall be made not more than once each calendar year, unless mutually agreed upon. Peddle runs shall be subject to bidding provided driver is qualified.

(b) When it becomes necessary to reduce the working force, the last man hired shall be laid off first, and when the force is again increased, the men are to be returned to work in reverse order in which they are laid off.

APPENDIX F

WATSON WILSON TRANSPORTATION SYSTEM, INC.
General Offices: 1910 Harney Street
Omaha 2, Nebraska

Certified Mail
Return Receipt Requested

June 30, 1965

Mr. Billy Butler
5033 Greybull Ave.
Cheyenne, Wyo.

Dear Sir:

Company relay driving jobs are available at Chicago, Illinois, Rock Island, Illinois, Des Moines, Iowa, Baxter Springs, Kansas, Liberal, Kansas, Goodland, Kansas, Kearney, Nebraska and St. Louis, Missouri.

This is your notice of the availability of such jobs and awards will be made with due regard with the master seniority list. If you wish to be considered for the above jobs, check your choices and return to me, Harold Melton, Omaha General.

1. I am available and wish to be considered for these jobs and my 1st choice, 2nd choice, 3rd choice, 4th choice, 5th choice, 6th choice, 7th choice and 8th choice are as follows:

Chicago, Illinois	☐	Liberal, Kansas	☐
Rock Island, Illinois	☐	Goodland, Kansas	☐
Des Moines, Iowa	☐	Kearney, Nebraska	☐
Baxter Springs, Kansas	☐	St. Louis, Missouri	☐

2. I do not desire to be considered for any of the above jobs. ☒

3. Drivers not desiring to be considered for a position or successful in holding a position will be placed on the master layoff list from which additional positions will be filled.

We would like the return of this letter within 7 days if at all possible.

CLERK U.S. DISTRICT COURT

Exhibits:

P 12 D Y 9

Case No. 20374-4

Yours very truly

/s/ Harold Melton
Harold E. Melton
V.P.—Industrial Relations

cc: Local Union

P.S. A self-addressed envelope is enclosed for your convenience.

APPENDIX G

WATSON WILSON TRANSPORTATION SYSTEM, INC.
General Offices: 1910 Harney Street
Omaha 2, Nebraska

Certified Mail
Return Receipt Requested

August 5, 1965

Mr. Billy Butler
5033 Greybull Ave.
Cheyenne, Wyoming

Dear Sir:

Company relay driving jobs are available at Baxter Springs, Kansas and Liberal, Kansas.

This is your notice of the availability of such jobs and awards will be made with due regard with the master seniority list. If you wish to be considered for the above jobs, check your 1st and 2nd choices and return to me, Harold Melton, Omaha General.

(1) I am available and wish to be considered for work at Baxter Springs, Kansas. ☒

(2) I am available and wish to be considered for work at Liberal, Kansas. ☒

(3) I do not desire to be considered for the above jobs. ☐

Drivers not desiring to be considered for a position or successful in holding a position will be kept on the master layoff list from which additional positions will be filled.

We would like the return of this letter within 7 days if at all possible.

CLERK U.S. DISTRICT COURT
Exhibits:
P 13 D Y 11
Case No. 20374-4

Yours very truly

/s/ Harold E. Melton
Harold E. Melton
V.P.—Industrial Relations

HEM/sj

cc: Local Union

P.S. A self-addressed envelope is enclosed for your convenience.

P.S. A self-addressed envelope is enclosed for your convenience.

see

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